

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

SUNNY L. JOHNSON,

Plaintiff,

vs.

No. 11-CV-00366 MCA/WDS

GENWORTH FINANCIAL HOME
EQUITY, INC., et al.,

Defendants.

ORDER

This case is before the Court upon Plaintiff's Motion for Extension of Time. [Doc.33]


Defendant Genworth Financial Home Equity Access, Inc. ("Genworth"), mailed its Motion to Dismiss to Plaintiff on May 6, 2011. Pursuant to the Local Rules of this Court and the Federal Rules of Civil Procedure, Plaintiff's response was due by May 23, 2011. On May 31, 2011, Genworth filed a Notice of Failure to respond. [Doc. 26] Genworth requested that the Court treat Plaintiff's failure to respond as Plaintiff's consent to Genworth's Motion to Dismiss. On May 31, 2011, Plaintiff filed her response to Genworth's motion to dismiss. [Doc. 27] On June 3, 2011, Plaintiff filed the instant Motion for Extension of Time.

The Court finds that Plaintiff's response was not filed within the time provided by the Local Rules of this Court and the Federal Rules of Civil Procedure. Although D.N.M. LR-Civ. 7.1(b) allows the Court to treat a party's failure to file a timely response to a motion as consent to grant the motion, the rule does not require the Court to grant a motion by default. Pursuant to D.N.M. Rule 1.7, and to avoid injustice, the Court will waive the time limits of LR-Civ. 7.4(a), accept Plaintiff's belated filing, and decide Genworth's motion on its merits. The Court admonishes Plaintiff to carefully review the Federal Rules of Civil Procedure and the Local

Rules of this Court. Plaintiff should not expect the Court to routinely excuse further breaches of the applicable Rules merely because she is *pro se*.

IT IS THEREFORE HEREBY ORDERED that Plaintiff's Motion for Extension of Time [Doc. 33] is granted and that her May 31, 2011 Response to Genworth's Motion to Dismiss shall be deemed timely filed.

So ordered this 19th day of March, 2012.


M. CHRISTINA ARMIJO
UNITED STATES DISTRICT JUDGE